IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21/08/2002

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THE HON'BLE MR.JUSTICE K.RAVIRAJA PANDIAN

C.R.P.No.3804 of 1994 and C.R.P.No. 3805 of 1994
and
C.M.P.Nos. 19399 and 19400 of 1994

C.R.P.No.3804 of 1994

V.Ramadoss .. Petitioner

-Vs-

Udayakumar .. Respondent

C.R.P.No.3805 of 1994

M.Rasu Chettiar .. Petitioner

-Vs-

Udayakumar .. Respondent

Petitions filed against the order and decretal order dated 18.10.1994 made in R.C.A.Nos.28 and 29 of 1991 on the file of the Suordinate Judge, Nagapattinam against the order and decretal order made in R.C.O.P.Nos.39 and 40 of 1990 dated 30.8.1991 on the file of the District Munsif Court, Tiruvarur.

!For Petitioner : Mr.G.Mani Narayanan

^For Respondents : Mr. B.Ramamurthi

:ORDER

The above Civil Revision Petitions are filed against the concurrent finding of fact rendered by the Rent Controller as well as the appellate authority that the petitioners herein as tenants have committed

wilful default in making the payment of rent in respect of the respective premises. However, the other ground, under which the eviction was sought for by the landlord i.e. for demolition and reconstruction has been rejected by the Rent Controller. Since the relief of eviction has been granted on the ground of wilful default, the respondent landlord thought it fit not to agitate the matter before the appellate authority. However the aggrieved tenants carried the matter on appeal before the appellate authority only to have an order of seal of approval of the order of the Rent Controller. Incidentally, it has to be stated that the authorities below have taken note of the stand taken by the tenants in their counter denying title of the landlord and granted the relief of eviction on the ground of denial of title also. The said orders are now put in issue in the present revision petitions.

2. Learned counsel for the appellant has vehemently contended that the appellate authority has come to the conclusion to grant the relief to the respondent on the ground of denial of title rather than to discuss the point in issue as to whether the petitioners have committed wilful default. He further contended that the appellate authority having given the finding that the denial of title is not bonafide and only a malafide without any further discussion as to the ground of wilful default i.e., whether the petitioner committed wilful default in making the payment of rent jumped to the conclusion that the tenants have committed wilful default.

3. He further contended that in the counter, the tenants have denied the title of the landlord. In such circumstances, it is the bounden duty of the landlord to have his original application amended by including the ground under Section 10(2)(vii) of the Tamilnadu Buildings (Lease and Rent Control) Act. For that purpose he very much relied on the decision in J.J.LAL PVT. LTD AND OTHERS VS. M.R.MURALI AND ANOTHER (2002 AIR SCW 794).

4. On the other hand, Mr. B.Ramamoorthi , learned counsel appearing for the respondent submitted that it is not as if the appellate authority has jumped to the conclusion without discussion. The appellate authority has confirmed the finding of the rent controller on the ground of wilful default after a detailed discussion. In addition to that, the ground under Section 10(2)(vii) i.e., denial of title of the respondent without any bona fide was also taken into consideration . He further contended that it is not as if the Euclid's theorem that as and when the title of the landlord has been denied in the counter, it is mandatory on the part of the landlord to amend the petition, when the parties to the proceedings are alive to the real issue in the proceedings and get along with the proceedings by adducing evidence on the ground of denial of title, it is not necessary to amend the pleadings. The very same decision relied on by the learned counsel for the petitioners in J.J.Lal's case (cited above) has been relied on by the learned counsel for the respondent to contend that even without a pleading, if materials are made available on the particular ground and on the basis of the same, if a decision has been taken , it cannot be complained of by the parties who are fully alive to the issue on the ground that the pleading has not been amended. He also contended that though elaborate argument was made by the learned counsel for the petitioners as to the applicability of the decision in J.J.Lal's case, he has not made out any case , which warrants interference with the finding arrived at as to the wilful default as well as the denial of title of the respondent.

5. I heard the arguments of the learned counsel appearing on either side.

6. As submitted by the learned counsel for the respondent, the argument of the learned counsel for the petitioners was much concentrated on the issue on the procedural aspect as to amending petition as and when the title of the landlord has been denied by the tenants in their counter. It is not very seriously disputed as to the finding arrived at on the ground of wilful default. As a matter of fact, both the courts below based on the materials placed have come to the conclusion that the ground of wilful default has been proved to the satisfaction of the Court. When that being the position, the only point to be decided in this case is on the question whether the pleading has to be amended or not.

7. In para 17 and 18 of the judgment in J.J. LAL PVT. LTD. VS. M. R.MURALI case (cited above), which the learned counsel for the respondent relied, the Apex Court has held as follows:

"17. A plea taken by the defendant in written statement can itself be made a ground for allowing relief to the plaintiff subject to well known limitations. The plea taken in the written statement should by itself be enough as furnishing a ground for relief to the plaintiff the plea taken by the defendant does not stand in need of any further pleadings being joined by the party, an issue is framed and put to trial unless the facts of the case show that the parties actually went to trial fully alive to the real issue between them and had opportunity of adducing evidence, that is, to put it in other words, the parties know that the plea taken in the written statement too was subject matter of trial and could form basis for relief to the plaintiff. In such case, though the pleadings may be lacking or there may be failure to frame an issue or a specific issue, the applicability of law laid down by this Court in NAGUBAI AMMAL AND OTHERS VS. B. SHAMA RAO AND OTHERS (1956 SCR 451) would be attracted.

8. The above extracted portion of the judgment of the Supreme Court clearly stares at the argument advanced by the learned counsel for the petitioners. The learned counsel for the petitioners emphasised para 11 of the judgment of the Supreme Court to support his contention, which reads as follows:

"...To claim eviction under Section 10(2)(vii), it is for the landlord to allege that the tenant has denied the title of the landlord or claimed a right of permanent tenancy and that such denial or claim was not bona fide. Once the landlord has adduced evidence substantiating the twin ingredients of the ground for eviction, the onus would shift on the tenants to show that either there was no denial or claim attracting applicability of clause (vii) of the same was bona fide. The application for eviction in the case before does not contain any averment making out a case of denial of landlords' title by the tenants...

But in the case on hand, not only the landlord but also the tenants were conscious of the fact of denial of title of the landlord and adduced evidence on either side in support of their respective stand. Only after filing of the petition on the ground of wilful default and for demolition and reconstruction, in defence the tenants in order to avoid the above two grounds have projected the case by denying the title of the landlord to the premises.

9. Learned counsel for the respondent also relied on the judgment of this Court in K.SRINIVASAN VS. V.NANDAGOPAL CHETTIAR AND OTHERS (2002 (1) L.W. 351) in respect of the very same proposition, which has been laid down at para 17 of the judgment in J.J.Lal's case (cited above). In this case, Murugesan,J has come to the very same conclusion by his judgment dated 23.3.2001. The very same reasoning has been subsequently given by the Supreme Court in the judgment reported in 2002 AIR SCW 794(J.J.Lal's case . In this decision also, the learned Judge has come to the conclusion after taking into consideration of the earlier judgment of this Court that even though there are no pleadings in the petition as to the denial of title by the tenant, if the landlord establishes either by way of subsequent pleadings as in that case in the affidavit filed in support of the interim applications or in the course of the evidence that the tenant has denied the title, the same could be a ground for eviction.

10. In the light of the reasoning given by the Supreme Court as well as this Court as referred to above, I am of the view that there is absolutely no infirmity or illegality in the order passed by the appellate authority confirming the order of the Rent Controller in granting the relief of eviction on the ground of wilful default as well as denial of title. Hence the Civil Revision Petitions deserve no merit consideration and they have to be dismissed. Accordingly, the civil revision petitions are dismissed. However, there will be no orders as to costs. Consequently, the connected C.M.Ps are closed.

21.8.2002
Index:Yes
Website:Yes

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K.RAVIRAJA PANDIAN,J.

To
1. The Subordinate Judge,
Nagapattinam.
2. The District Munsif,
Tiruvarur.

C.R.P.Nos.3804 & 3805 of 1994

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